TRIAL BRIEF

PRESENTED IN DEFENSE OF NORTHAMERICAN
ANTI-IMPERIALIST POLITICAL PRISONERS,
SUSAN ROSENBERG AND TIMOTHY BLUNK

Susan Rosenberg and Timothy Blunk are Northamerican anti-imperialists who had been active in the armed clandestine movement during the first half of the 1980's. They were arrested in Cherry Hill, New Jersey on November 29, 1984 and charged with possession of explosives, weapons and false ID. They went to trial on these charges in February, 1985 and presented this Brief which argues for the necessity and the right to resist injustice and oppression. The Brief is based in the principles of anti-imperialism and of international law. They were convicted in Federal court in New Jersey, and each was sentenced to 58 years in federal prison.

I. INTRODUCTION

Principles of international law, whether derived from treaty, custom, general rule or scholarly prescription are binding on the Courts of the United States, including this Court, and must be applied in the context of this case like any other. As the Supreme Court has said,

> International law is part of our law and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. The Paquette Habana, 175 U.S. 677,700 (1900)

The United Nations Charter, a treaty duly ratified by the United States Congress, 59 Stat. 1035 (1945) establishes the rights and obligations of civilized nations. The United States government arrogantly and brutally violates its international obligation to respect the right to self-determination for all nations and commits war crimes, crimes against peace and crimes against humanity on a daily basis. The Principles of International Law Recognized by the Charter and Judgment of the Nuremberg Tribunal impose on all citizens of civilized nations an obligation to uphold international law even when it may conflict with domestic law.

Susan Rosenberg and Timothy Blunk are revolutionary anti-imperilaist resistance fighters. At the time of their arrest, they were acting on their international duty to stop the crimes of the U.S. government. Failure to resist the U.S. government's egregious violations of international law is complicty with those crimes. Any domestic laws which tend to criminalize these resistance fighters for their acts are preempted by the Rules of International Law. This is buttressed by the common law doctrine that "criminal conduct" may be justified in certain situations if the essential mens rea element is lacking because of the actor's need to choose the "lesser of two evils." See, LaFave and Scott, Criminal Law (1972) Secs 49, 50; Hale v. Lawrence, 21 N.J.L. 714 (1848); United States v. Bailey, 444 U.S. 394 (1980)

II. ARGUMENT

The crimes of the United States government are legion. These crimes include: the genocide of Native American people and the denial of the sovereignty of Native American nations; the colonization and military occupation of Puerto Rico; the kidnapping, enslavement and genocide against African people and the continuing colonization of the New Afrikan/Black Nation; the "undeclared war" and acts of aggression against the sovereign nation of Nicaragua; the invasion of overthrow of the government of Grenada and its continued occupation; complicity in the colonization of the African people of Azania/South Africa; and complicity in the military occupation of Palestine and Lebanon by "israel." These acts violate a fundamental principle of International Law: the Right to Self-Determination and Independence for all peoples of the world. A necessary corollary of this principle is the obligation of nations not to colonize other nations. When this does happen, International Law recognizes the right of colonized peoples to resist, by all available means including armed struggle, their domination by the oppressor nation. These principles are supported and restated in all sources of International Law including treaties and covenants, international custom, and practice among civilized nations.

A. The Right to Self-Determination

The United Nations Charter is the most important multilaterial treaty of the modern era. Into a world in which colonialism was the dominant force in Africa, Asia and Latin America, the Charter brought the foundation of a legal right to self-determination for all peoples, and imposed upon the signatories the obligation to guarantee that right. The Charter was signed by representives of the United States and was ratified by the United States Congress in 1945. 59 Stat. 1035 (1945). The Charter provides in pertinent part:

CHAPTER I. PURPOSES AND PRINCIPLES

Article I

The purposes of the United Nations are ...

2) To develop friendly relations among nations based upon respect for the principle of self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

CHAPTER II. INTERNATIONAL ECONOMIC AND SOCIAL COOPERATION

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for the peaceful and friendly relations among nations based upon respect for the principle of equal rights and self-determinations of peoples, the United Nations shall promote:

a) higher standards of living, full employment and conditions of economic and social progress and development;
b) solutions of internation economic, social, health and related problems, and international cultural and educational cooperation; and
c) universal respect for all, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55.

Shortly after the establishment of this Charter, the member nations of the United Nations unanimously adopted the Universal Declaration of HUman Rights in order to further define and specif

the obligations imposed by the Charter upon member nations. General Assembly Resolution No. 217 (III), December 10, 1948. This Declaration served as a supplement to the Charter much the same as the Bill of Rights does to the United States Constitution. Referring to the Charter, the preamble to the Declaration states that the "member states have pledged themselves to achieve, in cooperation with the United Nations, the promotion of the universal respect for and observance of human rights and fundamental freedoms." The General Assembly later declared that the Charter principles embodied in the Declaration "constitute basic principles of international law." General Assembly Resolution No. 2625 (XXV), October 24, 1970.

By 1960, the United Nations, acting through the General Assembly as its plenary body and representing all the civilized nations of the world, was ready to give specificity to the principle of self-determination as a human right and fundamental freedom. On December 14, 1960, the General Assembly of the United Nations, as part of the further implementation of the basic principles in its founding Charter and the Universal Declration of Human Rights, unanimously enacted a Declaration on the Granting of Independence to Colonial Countries and Peoples [Resolution 1514 (XV)]. The Resolution "Solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations." It further declares that "immediate steps shall be taken in all territories which have not yet attained independence to transfer all powers to the peoples of those territories," and that "all armed action or repressive measures of any kinds directed against dependents shall cease . . ."

The passage of this historic resolution came in direct response to the armed struggle of the Algerian people, through the Algerian National Liberation Front (FLN), to liberate their country from French colonialism. Five days after the enactment of Resolution 1514(XV), the United Nations General Assembly passed a resolution recognizing the right of the Algerian people to self-determination and independence, and the need for effective guarantees to ensure the implementation of this right on the basis of respect for the unity and territorial integrity of Algeria [Resolution 1576 (XV)].

The right of the Algerian people to fight for self-determination included their right to fight on all fronts. This included fighting the colonizing power, France, on its own territory if it would hasten the process of decolonization. The Algerian people called on all socially conscious people in France to take whatever steps were necessary to aid them by resisting the French government at its base of power. Thismeant fighting the oppressor nation at home in solidarity with the legitimate struggle of the colonized people for independence.

In 1966, the second major United Nations human rights agreement, the United Nations International Covenant on Civil and Political Rights, was adopted, with self-determination enshrined as the first enumerated right:

Article 1 -

1. All peoples have the right to self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development.

> 2. The State Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right in conformity with the provisions of the United Nations Charter. (Emphasis added)

By October of 1970, wars of decolonization were raging in Asia, Southern Africa and other parts of the world, and the United Nations, now declaring outright that colonialism is a crime, established a program to implement the right of dependent peoples to self-determination. The General Assembly enacted a resolution entitled Programme of Action for the Full Implementation of the Declration of the Granting of Independence to Colonial Countries and Peoples [Resolution 2621 (XXV)], declaring:

> ...that further continuation of colonialism in all its forms and manifestations is a crime which constitutes a violation of the Charter of the United Nations, the Declaration on the Granting of Independence to Colonial Countries and Peoples and principles of international law.

The Programme further specifically recognized the "inherent right of colonial peoples to struggle by all necessary means at their disposal against colonial powers who suppress their aspiration for freedom and independence." (Emphasis added).

In addition to the resolutions of the General Assembly, the United Nations Charter has been specifically recognized by the World Court as establishing the right of colonial peoples to self-determination and independence, in two landmark decisions. In The Advisory Opinions of the Legal

Consequences for States of the Continued Presence of South Africa in Namibia, International Court of Justice (ICJ) Reports, 1971 and The Western Sahara Case, ICJ Reports, 1975, the court traced the doctrine of independence and self-determination directly to Articles I(2), 55 and 56 of the United Nations Charter. In The Western Sahara Case, the Court found that the legitimacy of the struggle for liberation from foreign domination is a rule of custom (ICJ Reports, 1975, p. 91) or "preemptory norm" of international law.

B. The Right to Resist

The right to self-determination is meaningless if there is no concomitant right to fight to end colonial domination.

By 1970, the countries of the world recognized that a primary method of resisting colonial domination and fighting for self-determination was armed struggle. General Assembly Resolution 2621 adopted on October 12, 1970, reaffirmed the inherent right of colonial peoples to use all means at their disposal to obtain their independence and freedom. This Resolution reads in part:

> The General Assembly . . .
>
> 2. Reaffirms the inherent right of colonial peoples to struggle by all necessary means at their disposal against colonial powers which suppress their aspirations for independence and freedom . . .
>
> * * *
>
> (2) Member states shall render all necessary moral and material assistance to the peoples of colonial territories in their struggle to attain freedom and independence . . .

(6)(a) All freedom fighters under detention shall be treated in accordance with the relevant provisions of the Geneva Convention relative to the Treatment of Prisoners of War, 12 August 1949.

The leading example of the Algerian War of decolonization, as well as subsequent wars of liberation in Vietnam, Guinea-Bissau/Cape Verde, Angola and Zimbabwe, have established in practice the legitimacy of resort to armed force to win the right to self-determination. The General Assembly in subsequent resolutions has repeatedly recognized that, since colonial powers attain and maintain their rule through military force, a true commitment to the principles of self-determination requires acceptance of a corollary that colonized peoples have the right to take up arms to fight for their freedom.

On December 8, 1978, the General Assembly enacted Resolution 33/24, entitled Importance of the Universal Realization of the Right of Peoples to Self-Determination and the Speedy Granting of Independence to Colonial Countries and Peoples for the effective guarantee and observance of human rights, wherein it stated:

> The General Assembly ... reaffirms the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial domination and foreign occupation by all means available, particularly armed struggle. (emphasis added)

The General Asembly also recognizes the obligation of all persons to assist the national liberation movements. In the recent past, the clearest call has been made to aid the Azanian people in their struggle to end their colonization by South Africa. Since 1962, over 35 resolutions have been adopted by the United Nations General Assembly and Security Council condemning apartheid

as an international "crime against humanity," affirming the right of the oppressed people of South Africa to seize power "by all available and appropriate means including armed struggle," calling for an international mandate to support the liberation movement, and adopting programs -- such as arms, trade and sporting embargos -- to accomplish the goal of establishing human rights and self-determination for the African people. See, Resolution Adopted by the United Nations General Assembly and Security Council on the Question of Apartheid, 1960-1980.

The intransigence of the South African government and its benefactor, the United States government, has compelled the vast majority of the world's nations to recognize the right of the Azanian people to end their colonization by any means necessary. The atrocity of the crime of apartheid has resulted in a full Programme of Action by the United Nations. This includes the obligation of all nations and people of the world to aid in bringing an end to the colonization of the Azanian people. Nations are called upon to isolate the government of South Africa poiltically, economically and socially. Individuals are required to act in solidarity with the African people and their organizations, the Pan-Africanist Congress (PAC) and the African National Congress (ANC). Both organizations are recognized as the legitimate representatives of the people of Azania/South Africa, and have observer status at the United Nations.

The Preamble to the Programme of Action states:

> The General Assembly considers apartheid a matter of universal concern. Governments, organizations and peoples all over the world must increase their support of the righteous struggle of the African people for justice and their inalienable right to self-determination, under the leadership of their national liberation movements. (Adopted by the General Assembly, November 9, 1976)

The United Nations has recognized the critical role also played by non-governmental organizations such as trade unions, anti-apartheid and solidarity movements and religious bodies in carrying out the UN mandate to assist the national liberation movement in ending apartheid:

> The General Assembly,
>
> . . .
>
> Conscious of the important role of world public opinion in international action for the eradication of apartheid,
>
> Commending the activities of anti-apartheid and solidarity movements and other non-governmental organizations in support of the resolution of the United Nations,
>
> Considering that the international mobilization against apartheid requires concerted action by anti-apartheid ... non-governmental organizations in isolating the apartheid regime, assiting the national liberation movements of South Africa and educating world opinion,
>
> . . .
>
> 2. Invites all governments to take appropriate steps to encourage and assist such non-governmental organizations.

Policies of Apartheid of the Government of South Africa, General Assembly Resolution 34/93, December 12, 1979.

From another source of International Law, The Principles in the Judgment of the Nurnberg Tribunal impose on all individuals the affirmative duty to prevent the commission of crimes as enumerated therein. A companion ruling states:

> Article 6: The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) CRIMES AGAINST PEACE: namely, planning, preparation, initiating or waging a war of aggression or a war in violation of international treaties, agreement s or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
(b) WAR CRIMES: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
(c) CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts commited against any civilian population, before or during the war; or persecutions on political, racial or religious grouns in execution of or in connection with any crime within the Jursidiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.

The Charter of the International Military Tribunal, August 8, 1945, 59 Stat. 1544 ("London Agreement")

These principles bind both the Executive Branch and the individual citizens of this country. U.S. Supreme Justice Robert K. Jackson, chief Allied prosecutor in the 1945 Nurnberg War Crimes Trials, said in his opening statement:

> "[W]hile this law is first applied against German aggressors, the law includes, and if it is to serve any useful purpose it must condemn, aggression by any other nations, including those who sit here now in judgment. We are able to do away with domestic tyranny and violence and aggression by those in power against the rights of their people only when we make all people answerable to the law."

2 Trial of the Major War Criminals 154 (1945)

The War Crimes Tribunal's Judgment establishes clearly that the Principles bind private citizens:

> "[T]he very essence of the [Nuremberg] Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state."

6 F.R.D. 69,110 (1946), Trial, supra, 411, 466 (1948).

The Tokyo War Crimes Tribunal went so far as to declare:

> [A]nyone with knowledge of illegal activity and an opportunity to do something about it is a potential criminal under international law unless that person takes affirmative measures to prevent the commission of the crime.

Tokyo War Crimes Decision, reprinted in L. Friedman, II The Law of War: A Documentary History, p. 1283 (1972)

Principle I, formulated by the United Nations International Law Commission, Yearbook of the International Law Commission, 1950, Vol. II, 191, states:

> Any person who commits or is an accomplice in the commission of an act which constitutes a crime under international law is responsible therefore and liable for punishment.

The Comments to this Principle, drafted by the Rapporteur, Mr. J. Spiropoulos, and adopted by the Commission state:

> The general principle of law underlying Principle I is that international law may impose duties on the individual, without any interpretaion of domestic law directly, a conception which in theory is consdered as involving the "international personality" of individuals. The findings of the Court are very definite on the question of whether the rules of international law may apply to individuals. 'That international law imposes duties and liabilities upon individuals as well as upon states,' says the Court, 'has long been recognized.'
>
> (Citations omitted)

Yearbook of the International Law Commission, supra, 192.

The right to self-determination is a fundamental right. Nations are bound by International Law to uphold the right to self-determination of all nations. Colonized people have the inalienable right to fight, by any means necessary, to end the domination and colonization of their land. When one country defies International Law and continues to colonize other nations or to commit war crimes, crimes against peace or crimes of genocide, the citizens of the oppressor nation have an international obligation to support the right to self-determination and to resist their "own" government.

C. U.S. Guilty of Crimes of Colonialism

1. The U.S. government violates the sovereignty of Native American Nations.

The history of the United States from its earliest beginnings is the history of a settler colonial empire. From the time that Europeans set eyes upon the North and South American continents and the Caribbean islands it was with a view of possession of the land and the conquest of the indigenous inhabitants. Britain, Spain, France and Holland ruthlessly competed for the property rights to the natural resources and ability to enslave the Native peoples. Genocide was carried out on a vast scale across the Americas putting an end to advanced civilizations such as the Mayans, Incas and Aztecs in the south to the Iroquois Nations to the north. It was not Africans who were the first slaves in North America - it was the Narragansett Indians in what became the Massachusetts Bay Colony. This subjugation was never accepted by the indigenous peoples and it required constant warfare by the European colonies to establish their supremacy.

The entire European Westward expansion of the European settlers during the 18th and 19th centuries constituted nothing less than the conquest and occupation of Native lands. The so-called "Indian Wars" were nothing less than aggressive, imperialist wars against sovereign nations. Whole nations of people, exemplified by the Cherokee, were forced onto "reservations", sometimes a thousand miles from ther ancestral homelands. Treaties signed by the U.S. government and Native American nations carried as little meaning for the U.S. as its international covenants in the United Nations do today. Where land or resources were concerned, a treaty, like international law, was made to be broken.

a. The U.S. government has committed genocide against the indigenous Native American Nations throughout its history.

b. Most of these nations have been driven to extinction. Some of those that remain are contained within reservations under the jurisdiction of the U.S. Congress. Many have no allotted land rights whatsoever.

c. Within the reservations the Indian peoples are suffering from extreme poverty, high rates of unemployment, lack of education, inadequate housing, high rates of sterilization among women (over 50%), cultural deformation.

d. U.S. corporations with government assistance are extorting reservations for their mineral rights (especially for the mining of uranium), water rights and grazing rights.

e. Native American workers are exploied in these uranium mines and milling operations and are suffering high rates of cancer due to overexposure to radioactive ore.

f. Native American Nations are represented within the International Treaty Council, an international body recognized by the United Nations as the leading voice for indigenous peoples around the world.

g. Many Native American Nations are recognized as sovereign nations by other progressive and socialist countries and maintain international relations.

h. Several Native American Nations participate in Oil Producing and Exporting Countries (OPEC).

i. Native Americans have fiercely resisted the U.S. government's seizure and occupation of their land and continue to struggle today for sovereignty in coalition organizations such as the American Indian Movement (AIM)

j. AIM, in particular, has been the constant target of U.S. government/FBI counterinsurgency which has included surveillance, infiltration, disruption, the frame-up and murder of leaders such as Ana Mai Aquash.

k. There are Native American POW's inside the U.S. prisons, the most internationally known case is that of Peltier (Gwarth-ee-lass) of the Lakota Nation.

l. Native American Nations have the right to sovereignty under international law. The U.S. government stands in flagrant violation of this right.

2. <u>The U.S. government has illegally occupied Northern Mexico since 1868</u>.

Land hungry European colonists established armed settlements in the Northern territories of the Republic of Mexico (what are known today as the states of California, Utah, Nevada, Colorado, Arizona and Texas). These settlements were usually expaned and defended through the use of terror and armed force against the indigenous Mexicano inhabitants. As the numbers of colonists grew, the U.S. Army was called in to crush Mexicano or Native American resistance. This pattern led to the Mexican-American war which ended with the treaty of Guadalupe Hidalgo in 1869, after the U.S. Army had driven all the way to Mexico City. Mexico was forced to cede all of its territory north of the Rio Grande River (what now approximates the southern border of the U.S.).

a. The "Mexican-American War" was an imperialist war designed from the outset to increase the territorial holdings of the United States. The Treaty of Guadalupe Hidalgo (1868) is illegitimate, null and void as the Mexican government was forced to sign while the U.S. Army occupied its capitol city.

b. The current U.S.-Mexican border is illegal and has never been recognized by the Mexicano/Chicano people who have historically inhaboted land to the north and south.

c. The Mexicano/Chicano people north of the imposed border have been systematically forced off their homelands. White European settlers used legal manuevers as well as a campaign of sheer terror including thousands of lynchings, to gain control of the land and subjugate the Mexicano/Chicano population.

d. Since 1868 the Mexicano/Chicano people north of the imposed border have been a colonized people deprived of the most fundamental human rights. They are exploied as migrant farm laborers, in sweat shops, or as domestics, and suffer from conditions of extreme poverty, a lack of education, inadequate housing, cultural oppression and deprivation, brutality and murder at the hands of the police, constant persecution from the Immigration and Naturalization Service, murder and brutal attacks by the Ku Klux Klan and other racist vigilantes.

e. The Mexicano/Chicano people have maintained their distinct Mexican culture, identity, traditions and the Spanish language. This is constantly renewed by the steady flow of Mexicans going back and forth across the illegal border in search of work.

f. Mexicano/Chicano leaders have been systematically imprisoned whiles others such as Corky Gonzalez and Ricardo Falcom have been murdered by the U.S. government.

g. The Mexicano/Chicano people have the right to self-determination which includes the right to reunify their occupied homeland with the Republic of Mexico. There is a growing revolutionary movement on both sides of the border that asserts this demand.

h. The U.S. government is violating the right of the Mexicano/Chicano people to self-determination.

3. <u>The U.S. government denies the New Afrikan/Black Nation the right to self-determination</u>.

a. The New Afrikan/Black people in America have a right to self-determination. New Afrikan/Black people constitute a colonized nation held captive by the United States. This captive nation has been kept in a state of subjugation through the armed force of the U.S. state.

b. The historical origin of this colonized nation lies in the first act of kidnapping of African for profit in the international slave market. The crime of slavery was formally introduced and practiced in the United States from 1619 until 1865. The African peoples response to chattel slavery resulted in approximately two hundred and fifty slave revolts between 1619 and 1860.

c. The 13 colonies of America instituted social practices and laws that systematically excluded Africans and African descendants from integration into the emerging settler colony of America. In the development of this nation a common history, a common language and a common resistance existed.

d. The end of the civil war, the emancipation proclamation and Black Reconstruction gave rise to the land base and common economy that were necessary to complete the righteous claim of nationhood.

e. From 1865 to 1867 center of this Black nation set up governments, militias, economic and social relations independent of the Union government. These center included the territory of Tunis Campbell, the South Carolina sea islands, centers in Mississippi, Savanah, Georgia, and St. John's River, Florida. In order to destroy these newly independent centers of the Black nation, a reign of terror was imposed by the Ku Klux Klan and the federal government. This successful subjugation forced the majority of Black people into a state of semi-slavery that continues to this day.

f. The U.S. government imposed citizenship on the New Afrikan/Black people with the adoption of the 14th amendment. At no time has the U.S. government participated in a plebiscite with New Afrikan people to determine their political status by a free and informed choice as required by the U.S. Constitution and the United Nations Charter.

g. The systematic colonization of the New Afrikan/Black nation has constituted an undeclared war against it. From 1882 to 1950, 3436 known Black people have been lynched and virtually no one was punished for such crimes because the courts and police collaborated with it. The current statistics on police attacks on Black people are staggering. In New York City 167 Black people were killed by the police between 1974-1984. Between 1971 and 1975, 82% of police murders were of Black people who represented 36% of the population. In Philadelphia between 1960-1970, 90% of police murders were of Black people who represented 22% of the population. In Chicago from 1974-1978, 64% of police killings were of Black people who represent 33% of the population. In Los Angeles 50% of police killings were of Black people who represent 18% of the population. In Memphis Black people are 5 1/2 times more likely to be killed by the police as white people. Throughout the country the police have murdered 400 Third World people during each year.

h. The conditions of life for New Afrikan people are desparate. The median family income in 1980 for Black people was 58% that of whites and falling. The life expectancy for Black men is 65 as compared to white men, 70.2. The life expectancy for Black women is 73.6 as compared to white women, 77.8. Black infant mortality is 23.6 per 1,000 births as compared to 12.3 for white people. Black people are forced to live with a massive influx of drugs into their communities. In federally funded drug programs Black people are 36.2% of the clinic clients, while being only 11.1% of the population. Black people experience extreme poverty, lack of education, and the unemployment rate of Black men over the age of 16 is 55%. A dramatic rise in racist attacks by white supremacist vigilante organizations like the KKK is happening nation-wide. Black women are facing forced sterilization at the rate of 32%.

i. The U.S. government strategy of counterinsurgency and criminalization of the leadership of the New Afrikan/Black national struggle has been carried out by the COINTELPRO counterintelligence program. This was a program developed by J.E. Hoover and the FBI that was aimed at destroying through any method possible the rise of national Black leadership. The results of this program were the assassination of Martin Luther King and Malcolm X. Hundreds of local leaders in dozens of cities were imprisoned, forced into exile or murdered; dozens of Black Panther Party offices were raised and some fire-bombed, organizations infiltrated, internal conflicts heightened. The destruction of the mass movements fighting for human rights and justice was one goal of this strategy.

j. The 400 year history of resistance on the part of New Afrikan/Black people has its current expression in those individuals and organizations, like the BLA (Black Liberation Army) and New Afrikan freedom fighters, who are consciously waging a war of national liberation against colonialism.

k. Arguments as to whether the conditions of the New Afrikan/Black nation conform to a definition of colonialism are academic for two reasons: 1. No nation in its anti-colonial struggle against the colonizer is ever recognized without force of arms; and 2. The longevity and intensity of inhumane treatment and deprivation of Black people fall within the International Covenant for the elimination of all forms of racial discrimination, and the International Convention for the punishment of crimes of genocide. The violation of the right of self-determination is apparent.

l. The United States government and its courts cannot deny that New Afrikan people are fighting for independence and self-determination by simply wishing it were so. The Geneva Convention and Protocols protect national liberation fighters under the spirit of its humanitarian development and apply with full force to the New Afrikan national liberation struggle. Mr. Sekou Odinga, Mr. Kuwasi Balagoon and other New Afrikan Prisoners of War should be recognized by this Court. We join in their application that U.S. courts of law do not have jurisdiction over them.

4. <u>The United States illegally holds and occupies Puerto Rico as a direct colony</u>.

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4. <u>The United States illegally holds and occupies Puerto Rico as a direct colony</u>.

a. The U.S. invaded the sovereign republic of Puerto Rico in 1898 and has maintained military, economic and political control over the island to this day.

b. The Puerto Rican people have never been allowed to conduct a plebiscite free from U.S. military occupation or under international supervision. U.S. citizenship was imposed by the United States Congress through the Jones Act in 1917 so that Puerto Ricans could be conscripted to fight in WWI.

c. Under the colonial administration the agricultural economy was destroyed in order th vreate a large supply of cheap labor and a huge market for U.S. goods. The Puerto Rican economy is totally organized in the interests of the U.S., not in the interests of the Puerto Rican people.

d. The economic, social and cultural distortion as a result of colonialism has forced one-third of the Puerto Rican population to leave their homelands in search of employment in the United States.

e. Puerto Ricans inside the U.S. are forced to live in conditions of extreme poverty, suffering disproportionately high rates of unemployment, lack of education, inadequate housing, the drug plague and the occupation of their communities by the police.

f. Since the invasion of 1898, the U.S. has maintained Puerto Rico as a garrison from which to control the Caribbean, Central America and the sea lanes through the Panama Canal. The Roosevelt Roads Naval Base in Puerto Rico is the second largest for the U.S. Navy.

g. The Navy has seized control of the island of Vieques off Puerto Rico's coastline for bombing practice and military exercises. The inhabitants of Vieques have had their fishing and farming industries destroyed. Many have been forced to leave.

h. 40% of Puerto Rican women of child-bearing age have been sterilized as have 25% of the men. This amounts to a strategy of genocide.

i. There exists a plan for the ultimate exploitation of Puerto Rico called the "2020 Plan," named for the year of its expected completion. It calls for intensive strip mining of vast areas of the Puerto Rican subsoil for the extraction of

strategic minerals necessary for the U.S. defense industry. Refining and milling centers will be established in industrial complexes located near military bases. These operations will devastate the environment, destroy the potable water supply and make the island virtually uninhabitable except for those few working in the mines or stationed in the military bases. This plan is now being implemented. The infrastructure (highways, etc.) are under construction and many old military bases and barracks have been reactivated.

j. Since 1898 the Puerto Rican people have resisted the U.S. occupation of their nation and carry on that resistance today in the Puerto Rican Independence Movement. Faced with U.S. intransigence and the growing militarization of the island, Puerto Rican patriotic clandestine organizations have been waging armed struggle on the island and here within the U.S. in the rearguard, as is their right under international law.

k. Currently there are 14 Puerto Rican Prisoners of War held within U.S. prisons as a result of capture in their anti-colonial struggle. Another POW, William Morales, is being held in a Mexican prison. We join in these comrades' application to have their case judged before an international court or military tribunal and be accorded status as POWs.

l. The United Nations Committee of 24 (Decolonization Committee) has determined that Puerto Rico is a direct colony of the United States and has made recommendations to the General Assembly calling for an end to the militarization of the island, an end to repression against the independence movement including the illegal use of the grand jury and called for the Puerto Rican people to be given the right to freely decide their own destinies.

5. <u>The United States government is guilty of war crimes, the violation of the right of nations to self-determination and crimes against humanity in Central America</u>.

Central American and Caribbean nations have been invaded, occupied and plundered by United States troops and mercenaries for almost two centuries, in the interests of U.S. capital to control the vital flow of resources and trade for the region and all of Latin America. Over the past decade, the U.S. government's military involvement has dramatically increased in pursuit of U.S. "vital interests." In 1843, this policy was called the Monroe Doctrine. The result of direct U.S. intervention has been the murder of literally hundreds amd thousands of people, systematic torture and the destruction of property. U.S. agrression has been in violation of international law as well as U.S. domestic law.

a. In Nicaragua the United States government engages in overt and covert actions to overthrow the legitimate government. On February 21, 1985, President Reagan stated, when asked if he wasn't seeking to remove the Sandinista government from power, "Well, remove it in the sense of its present structure..." The U.S. government funds, trains and directs the war waged by the <u>contras</u> (counter-revolutionary paramilitary forces) to overthrow the democractically elected Nicaraguan government. This violates the Neutruality Act, the War Powers Act and the Boland Amendment.

b. While at "peace" with Nicaragua, the United States government supplies the contras with money, equipment, weapons, uniforms and advisors for military training. The contras have committed unspeakable atrocities against the civilian population. Between 1981 and 1984 they assassinated 854 people, including 321 civil servants, 436 peasants working on agricultural collectives and 89 adult education teachers.

c. The contrasts have attempted to destroy Nicaragua's economy through economic sabotage. Damage to factories, schools, day care centers, health centers and ports has amounted to more than $108.5 million. Total economic losses total over $250 million in a country that earns a mere $400 million in exports.

d. The United States government allows the Civilian Military Assistance (CMA) and others to recruit U.S. citizen mercenaries to the contra forces, finance the contras with private and corporate funds, and use U.S. Air Force jets for transportation.

e. The United States prepared a CIA training manual for the contras which urges sabotage and the assassination of leaders.

f. The United States government has also engaged in direct acts of war against Nicaragua. The CIA took credit for helping to plan the bombin of the Puerto Corinto oil refineries in October, 1983 and the mining of the Corinto harbor in 1984. In January, 1984 and again in September, CIA helicopters were shot down in Nicaragua; in 1984, a CIA plane piloted by a contra was also shot down.

g. The U.S. government operates contra training camps inside the U.S., such as Camp Libertad. Most are located in the Miami, Florida area.

h. In El Salvador, the U.S. government is responsible for funding, training and directing the military forces which violate the basic human rights of the population on a massive scale. The Salvadoran government and right-wing death squads are responsible for the deaths of over 47,000 innocent civilians in the past 4 years. U.S. military aid has jumped from $5.6 million in 1980 to $64.8 million in 1983 to over $200 million in 1984. Politically, for years the U.S. backed the fascist Roberto D'Aubisson and his notorious death squads; then financed the Duarte campaign with CIA funds.

i. The U.S. trains Salvadoran troops and officers in counterinsurgency techniques at Fort Bragg, N.C. The U.S. government provides military advisors to the Salvadoran Army and mercenaries through CIA channels. United States reconnaisance planes and Ac-47 Dragonfly jets are provided to the Salvadoran Air Force which indiscriminantly bombs the civilian population with conventional as well as napalm and white phosphorus bombs, weapons which are outlawed by the Geneva Conventions.

j. On October 25, 1983, the United States government violated the Grenadian people's right to self-determination by militarily invading Grenada, overthrowing the government and occupying the island. The invasion was the culmination of several years of planning to destroy the Black socialist government headed by Maurice Bishop and the New Jewel Movement. The invasion was rehearsed and staged from Vieques, Puerto Rico. During the invasion the United States military bombed a mental hospital and interned leaders of the New Jewel Movement. The U.S. continues to occupy Grenada. This aggression and cowardly act of war was an absolute violation of the Grenadian nation's right to self-determination which was justified by Reagan with lies about protecting U.S. lives and property interests from Cuban militarization of the island.

k. Honduras has been turned into a garrison state by the U.S. government. It is one of the "national security states" as defined by U.S. aggressive foreign policy. The U.S. military build-up and virtual occupation of Honduras by U.S. military personnel is for the direct purpose of aiding, leading and backing the contras in their current attacks against Nicaragua.

l. "Big Pine II," the joint U.S.-Honduran war games were the largest ever held in the region. These exercises were training for a full-scale U.S. invasion of Nicaragua. In that, they resemble "Operation Ocean Venture," U.S. war "games" held off the coast of Vieques, Puerto Rico as a rehearsal of the invasion of Grenada.

D. The right of North Americans to resist U.S. imperialism is protected under International Law.

As stated above, the United States government is guilty of the crime of colonialism in the specific cases of Puerto Rico, the New Afrikan/Black Nation, in the denial of sovereignty to Native American nations and in violation of the Mexicano/Chicano peoples' right to self-determination. The United States government stands as an open accomplice in the racist South African regime's occupation of Namibia and the colonial subjugation of the Azanian/South African people. Further, it is clear that the U.S. government has been carrying out an aggressive war strategy which has resulted in the invasion and occupation of Grenada; the shelling of Lebanon and escalates daily in Central America.

That International Law is openly flouted as in the World Court or that its own domestic laws are cast aside would seem to be of no consequence to this government. With thinky disguised rhetoric the U.S. attempts to hide reality and the true nature of its crimes against humanity and enforces its position with formidable military power. If the experience of Vietnam is any indication, it is only through the force of arms on the part of the colonized people primarily, international condemnation and growing resistance within the U.S. itself that oppressed and colonized nations can win self-determination.

International law is very clear on the rights of colonized nations to struggle with all available means, including armed struggle, for their liberation. The particular experiences of the Puerto Rican Independence Movement and the struggle of the New Afrikan/Black Nation for land and independence have proven that, if they are to win

full self-determination for their nations they will have to prosecute an armed struggle. In the face of electoral strategies, civil rights movements, and peaceful protest that U.S. has responded with repression and the imprisonment or murder of key leaders. As with the experience of any colonized people, the path of armed struggle is only chosen when the colonized is unrelenting -- when there is no other avenue available to put an end to the systematic violence inherent in the colonial relationship. By its very nature, the colonial relationship is one imposed and maintained through military and paramilitary force.

One of the features of anti-colonial struggle as it has taken place in history is that the war is fought almost solely within the colony, and the colonized peoples pay the dearest price in loss of life, the destruction of the economy and infrastructure, and in the devastation of agriculture. The counterinsurgency wars waged by colonial powers such as France, Britain and the U.S. have taken on genocidal proportions as in Vietnam for over 40 years. This was recognized by the FLN of Algeria which began a rearguard armed struggle within France. This was determined to have been decisive in bringing about a quicker end to the war and meant the loss of fewer of lives overall, and in particular for the Algerian people. Indeed, Amilcar Cabral, the great leader of the national liberation struggle of the peoples of Guinea-Bissau and Cape Verde called upon the Organization of African Unity to provide airplanes with which to bomb targets inside Portugal. By bringing the anti-colonial war into the oppressor nation, the actual cost of the war to the oppressor nation is raised. Otherwise, the colonizer can sustain its military operations far longer at the terrible expense of the colonized people.

While there may be no specific mention in the UN Charter pertaining to the specific responsibility of members of the oppressor or colonizing nations, it can only be inferred that the responsibility does exist for such persons or organizations to aid in the efforts towards decolonization. This is undeniably the spirit and intent behind the UN mandate concerning decolonization, and it is spelled out quite specifically in the case of the liberation struggles in Southern Africa. If the UN goes so far as to guarantee the right of colonized peoples to wage armed struggle for their liberation and to put an end to the crime of colonialism, there are certainly duties and responsibilities entailed for members of the oppressor nation.

Simply stated, that responsibility is to render all possible assistance, material and otherwise, to the organized liberation forces of the colonized nation, while bringing all possible pressure to bear upon the oppressor nation's government to withdraw. One of the highest forms of internationalism has been demonstrated throughout history by solidarity brigades from other nations (often from national liberation movements) that fight alongside the liberation army engaged in anti-colonial war. Here in the United States, escaped slaves often fought alongside Native Americans against white settler and the U.S. Army. During the "Mexican-American" War, a formation of Irish immigrant workers calling themselves the San Patricio Corps fought with the Mexican Army under General Santa Ana against the U.S. conquest of Mexican territory.

The great Black leader and Pan-Africanist of the 20th century, El Hajj Malik Shabazz (Malcolm X) was very clear on the responsibility of white North Americans to the struggle of the New Afrikan/Black Nation: "We need allies who are going to help us achieve victory, not allies who are going to tell us to be non-violent. If a white man wants to be an ally, just ask him what he thinks of John Brown. You know what John Brown did? He went to war. He was a white man who went to war to help free the

The right and responsibility of members of an oppressor or colonizing nation are also outlined under the Nuremberg Principles. In the modern era, colonialism and neo-colonialism constitute the most systematic and devastating crimes against humanity. The represent the denial to whole nations of the right to control their own destiny. Individuals of the oppressor nation are therefore duty-bound to bring these crimes to an end.

The United States government is guilty of the continuing colonization of the island of Puerto Rico; the New Afrikan/Black nation; the Mexicano/Chicano people and Native American Nations. The North American people of European descent -- those who constitute an oppressor nation within the Northamerican territory -- therefore must render all possible material and moral assistance to these legitimate anti-colonial struggles against the U.S. government and its allies. As these national liberation movements find it necessary to wage armed struggle among their forms of resistance, Northamericans acting with good conscience and within their international duty must recognize and support this legitimate form of struggle.

The highest fulfillment of this duty is to fight alongside colonized peoples until the U.S. government relents and self-determination is achieved for all of the oppressed nations internal and external to U.S. borders. This solidarity takes many forms, including raising medical aid, other forms of material aid, education, direct action against the war machine and war profiteers, to the formation of solidarity brigades functioning under the leadership of the armed liberation fronts of the oppressed nations. Within the U.S., two Northamerican combatants, Judy Clark and David Gilbert, were captured in such a capacity as they fought under the leadership of the Black Liberation Army (BLA). They are now held as political prisoners.

The revolutionary anti-imperialist resistance fighters on the instant matter, Susan Rosenberg and Timothy Blunk, while not functioning integrally within a national liberation movement, were part of a clandestine resistance that has been fulfilling the essential task of moving forward the process of decolonization by organizing Northamericans to raise the demand with the U.S. government; and providing solidarity with the national liberation movements on many levels, including armed resistance against the military, police forces and colonial apparatus. It is entirely consistent with international law mandating decolonization. The prosecution of the instant cases is thus an abrogation of the UN Charter, UN resolutions on decolonization and the Nurnberg Principles.

The Nurnberg Principles also clearly establish the duties and responsibilities of persons living under a government that is actively committing crimes of aggressive war and other crimes against humanity such as genocide. Significantly, the United States government has refused to sign the UN Declaration Against Genocide since the government knows full well its liability.

The Nurnberg Principles came into being following a disastrous chapter in modern history - the rise of the Nazi regime in Germany and the ensuing imperialist wars in Europe, accompanied by the subjugation, persecution and murder of millions. An international conflagration unparalleled in human history was required to put an end to the Nazi regime that cost millions of lives. Europe and particularly the Soviet Union were devastated. The intention of Nurnberg was to establish the duties and responsibilities of persons - individuals - living under governments moving towards or executing such crimes and to cloak them with internationally recognized legal protection to take all necessary and appropriate action to put such a government in check. The commission of crimes of such magnitude requires the

active and/or passive collaboration of the oppressor nation population. If this collaboration can be effectively disrupted, the crimes can be stopped. People living under such governments as Nazi Germany, or today's South Africa, "israel," Britain, France or the United States are in the best position to prevent war crimes and have the primary responsibility to do so.

Clearly, we cannot expect the perpetrators to prosecute themselves. In Nazi Germany, the German people were fed a steady diet of propaganda to justify aggressive wars and the annihilation of millions of Jews and Eastern Europeans. As a nation, they were engaged in a massive self-deception.

The Reagan administration's propoaganda about Soviet expansionism and its blindness to the atrocities committed by its agents, like the contras in Nicaragua, is a modern example of this same phenomenon. In the name of helping the "friends of democracy," the U.S. is being mobilized for war. The mobilization of white supremacy, right-wing Christian fundamentalism and zionism also has striking historic parallels.

Where the U.S. stands indicted, and properly so, is in the international arena of the UN. With growing regularity, the U.S. stands isolated in its support for the fascist South African regime, in its lone support for israel's zionist expansionism and occupation of Arab lands, and in its overt war against the sovereign Republic of Nicaragua. Indeed, recently the United States violated its international covenant with the UN in refusing to recognize the jurisdiction of the World Court in the case of <u>The Republic of Nicaragua v. United States of America</u>. The World Court issued a lengthy opinion and direction, ordering the U.S. to cease all hostile actions against Nicaragua. The U.S. has ignored all such directions in flagrant violation of international liaw. This has been but one attempt to prosecute the United States government for war crimes.

The perception of the Reagan administration of the isolation of the United States within the UN is quite accurate, though the reasons for it have nothing to do with Soveit hegemony within the Third World. The US government stands indicted for crimes against humanity, complicity with the crime of aparthied, genocide, crimes of naked military aggression against sovereign nations. U.S. imperialism is identified by masses of the world's people as the enemy of humanity. The responsibility for Northamericans of the oppressor nation could not be clearer in the face of all available evidence.

There is no indication whatsoever that the U.S. government, within any of the branches: legislative, executive or judicial, has any intention of altering its course in Central America, in the Middle East or in Southern Africa. The government's practice over successive regimes, Republican and Democratic, have shown no meaningful variation from its commitment to secure any possible economic, political or military advantage in the wrold and to maintain it with the force of arms. The Nurnberg Principles compel people residing within the U.S. to take all appropriate and necessary action to stop or prevent the crimes of the U.S. government. Just as in World War II, it will take more than mere symbolic protest to stop a war machine so devoted to its own power. Many aveneus of legitimate resistance are being pursued by thousands of people of conscience across the country. Church people are taking necessary action to give sanctuary to refugees from the U.S. sponsored wars in Central America. The fact that U.S. domestic law is being violated pales in contrast to the enormity of the crime averted by giving sanctuary. The U.S. government knows full well that refugees sent back to El Salvador or Guatemala face certain death or "disappearance," yet it continues to deport hundreds of refugees and to criminally prosecute Sanctuary workers. Hundreds of people in the U.S. have also participated in civil disobedience to blockade military bases or

occupy government officials' officers. Hundred more register protest against the U.S. support for South Africa by being arrested in front of South African consulates and embassies.

At this early stage the U.S. government has already made it clear that any effective action, non-violent or otherwise, will be criminalized and neutralized. The U.S. federal police and investigative agencies have been empowered to carry out campaigns of infiltration and disruption against organizations raising material aid for the liberation movements in Central America and Azania/South Africa. The experience of the anti-war movement while the U.S. was in Vietnam and that of the New Afrikan/Black national liberation movement and Puerto Rican independence movement demonstrate that effective resistance will be met with state repression that has included murder and imprisonment of leaders and harassment and intimidation of countless others. Thousands were forced to leave the country and thousands were imprisoned for merely resisting the draft. Many forms of resistance must be and will be utilized by the masses of Northamericans as the U.S. war drive unfolds. We can expect the revolutionary organizations of the national liberation movements inside the U.S. to fulfill their internationalist duty to their sister nations in Central America and Africa by escalating their own anti-colonial struggles. Given the steadfast commitment of the U.S. to its colonial and neocolonial interests in the Third World (e.g. Central America) and given that it is willing to directly intervene with its own military forces to maintain those interests who can only assume that the U.S. will likewise guarantee internal stability (the precondition for its ability to wage these wars). It has in the past and will continue to do this through armed power and police/FBI repression. In addition to many forms of non-violent resistance or civil disobedience, armed resistance emerges as a logical necessity. This was true for the French Resistance and anti-Nazi fighters inside Germany. Again we assert that the armed resistance waged within the

oppressor nations under conditions such as exist within the U.S. is clearly protected by the Nurnberg Principles. It is part of a strategy to avoid a disaster of international proportions as happened during World War II, and in the immediate, comprise necessary steps to stop the genocide going on right now in Central America. It is the contention of captured resistance fighters, Tim Blunk and Susan Rosenberg, that our actions and the anti-imperialist armed resistance is protected under the Nurnberg Principles.

E. Summary

The U.S. stands guilty of the crimes of colonialism and violation of the right of nations to self-determination. Further, the U.S. is guilty of waging aggressive wars against sovereign nations and crimes against humanity. International law recognizes the right of colonized peoples to wage armed struggle to end their colonial condition. The captured resistance fighters herein claim protection under this law through our responsibility to render all possible assistance and solidarity, including armed resistance, against the oppressor nation (the U.S.) towards the goal of decolonization. We assert our international rights and responsibilities under the Nurnberg Principles to build resistance against the U.S. war machine, including armed resistance. Based upon international law and the clear direction of history towards national liberation and decolonization, there can be no other conclusion but that Northamericans, members of the U.S. oppressor nation, have the duty to resist U.S. imperialism. There is no basis whatsoever for the criminal U.S. government or this court to find criminal intent or mens rea behind the actions of captured resistance fighters, Tim Blunk and Susan Rosenberg.

F. The Supremacy of International Law

The United Nations Charter is a treaty of the United States, duly ratified by Congress. Article Six, paragraph 2 of the United States Constitution states:

> "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made under the authority of the United States shall be the supreme law of the land and the judges of every states shall be bound thereby."

The Supreme Court has ruled that a treaty "stands on the same footing of supremacy as do the provisions of the Constitution and laws of the United States. It operates of itself without the aid of any legislation, state or national; and it will be applied and given authoritative effect by the courts." Asakura v. Seattle, 265 U.S. 332, 341 (1924). The Court has also said that "the construction of treaties is judicial in nature, and courts when called upon to act shall be careful to see that international agreements are faithfully kept and observed..." Sullivan v. Kidd, 254 U.S. 433, 442 (1921); see also, Cook v. U.S., 288 U.S. 102.

Further the obligation on all nations to insure the right of independence and self-determination to colonized nations is established not only by the UN Charter and subsequent implementing resolutions of the General Assembly, but also by virtue of its universal acceptance and recognition in the world, which have made it a rule of customary law, or preemptory norm, like other international rules which have long been accepted by the United States courts.

More recently, the United States Court of Appeals for the Second Circuit in Filartega v. Pena-Inala, 630 F.2d 876 (2d Cir. 1980), applying various sources of international law, held that the prohinition against torture was a norm of international law, binding upon the United States government and enforceable in its courts. See, United States v. Toscannino, 500 F.2d 267, 276-78 (2d Cir. 1974); F.T.C. v. Caben, 636 F.2d 1300 (D.C. Cir. 1980); Fernandez v. Wilkinson, 505 F. Supp 737 (D. Kan. 1980).

In reaching its holding, the court in Filartega stated that the declarations of the General Assembly of the United Nations on human rights, "specify with great precision the obligations of member nations under the Charter: and "(s)ince their adoption, (m)embers can no longer contend that they do not know what human rights they promised in the Charter to promote."

The Nurnberg Principles establish the doctrine of the supremacy of international law over domestic law if there is a conflict. The Comments to Principle II explain:

> The principle that a person committing an international crime is responsible therefore and liable to punishment under international law, independently of the attitude of domestic law, implies what is commonly called the "supremacy" of international over domestic law. It is accordingly considered that international law can bind individuals even if domestic law does not direct them to observe the rules of international law. (It is in this sense that "supremacy" is used here.) Characteristic of the above inference is the following passage of the Court's findings: '...The very essence of the Charter is that inidividuals have international duties which transcend the national obligations of obedience imposed by the individual state." (Citations omitted.)

Yearbook of the International Law Commission, 1950, Vol. II, p. 192.

Common law principles, as applied to federal courts, recognize that there are affirmative defenses to acts which would otherwise be "criminal." These defenses (which include self-defense; diminished capacity; duress and necessity) are based on a lack of the requisite mens rea. Duress and necessity * arise in situations in which an actor is required to make a choice of the "lesser of two evils;" that is, to violate a criminal law in order to avoid or prevent a greater evil.

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* The principle distinction between the defenses is whether the threat of danger or injury arises from the acts of other human beings (duress) or from the acts of physical forces (necessity). Modern case law tends to blur these distinctions. United States v. Bailey, 444 U.S. 394 (1979).

The Supreme Court has recognized that there is a modern application of justification in federal law. United States v. Bailey, 444 U.S. 394 (1980). It is based upon the premise that an actor may have to violate the law in certain situations of great, compelling need. There, the Supreme Court found that a prison escape may be justified as the only way to end brutal, life-threatening conditions. However, the Court found that the danger had been averted by the escape, and so the prisoners were bound to turn themselves in. Here, the danger will only be averted when the United States government ceases its flagrant violations of international law -- and it is unlikely that this will occur in the near future.

The resistance fighters herein do not seek to "justify" their acts of resistance on the basis of domestic law. Their acts arose out of their international duty to stop the crimes of the United States government.

III. TESTIMONY

If permitted to present a defense, the resistance fighters will prove their case through the testimony of the following witnesses:

A. Sekou Odinga, New Afrikan Prisoner of War

Mr. Odinga is a New Afrikan Freedom Fighter currently held as a Prisoner of War at the United States Penitentiary at Marion, Illinois. He is a member of the Black Liberation Army.

Mr. Odinga was a member of the Black Panther Party in the late 1960s, where he served as a political education instructor. Mr. Odinga was indicted as one of the New York Panther 21, a multiple count conspiracy indictment against 21 members of the Black Panther Party in 1969. After a trial lasting over 7 months, all defendants were acquitted of all charges. Mr. Odinga was acquitted *in absentia*, as he had become a fugitive to avoid the government's COINTELPRO conspiracy to destroy the Black Panther Party (that conspiracy resulted in the FBI/Chicago Police Department murder of BPP leader Fred Hampton; the conviction on false charges of California BPP leader Geronimo Pratt; and the incarceration of thousands of members of the Black Panther Party.)

Mr. Odinga subsequently spent over ten years as a combatant in the Black Liberation Army (BLA). He has testified as an expert witness on the principles of clndestine resistance and on the application of international law to the national liberation struggle of the New Afrikan/Black Nation. Mr. Odinga was produced, while in federal custody, to testify at the proceedings in *People of the State of New York v. Kuwasi Balagoon, et al.*, Ind No. 81-285 and 81-6. (N.Y. Sup.Co.)

Mr. Odinga will testify as to the existence of, and continual colonization of, the New Afrikan nation within the United States; and the history of resistance of the New Afrikan/Black people to the crime of colonialism. He will also testify as to the principles of clandestine resistance, which

B. Michael Ratner

Mr. Ratner is a staff attorney at the Center for Constitutional Rights, New York, New York. He is an acknowledged expert on international law, and has traveled throughout Central America and the Caribbean in his professional capacity.

Mr. Ratner will testify about the extensive illegal activities of the United States government in Central America, in particular, in Nicaragua. He will testify as to United States government sponsorship of war crimes, as defined by the Nurnberg Principles, through its funding of the contras and various covert aggressive activities.

C. Alexis Mansol

Mr. Mansol is the Director of the Taller Arte y Cultura (Center for Arts and Culture) in Adjuntas, Puerto Rico. He is a civil engineer and a graduate of the College of Mayaguez in Puerto Rico.

Mr. Mansol is Puerto Rico's leading expert on the "2020 Plan," the United States government plan to transform the island of Puerto Rico into a chain of strip mines, military bases and high-technology parks, at the cost of its natural resources, ecological balance, and the economic livelihoods of masses of its people. He is the author of The 2020 Plan and Mining Exploitation, a textbook used in social science and geography courses throughout the University of Puerto Rico. Mr. Mansol has participated in over 125 professional and academic conferences over the last two years to discuss the implications of the United States continuing colonization of Puerto Rico.

In 1983, Mr. Mansol lectured at 15 universities within the United States in the course of a tour that covered 8 states.

Mr. Mansol will testify about the destruction of the ecology of Puerto Rico by United States exploitation of its natural resources. He will discuss the military occupation of the island, including the nature of the bombardment of the island of Vieques (the use of Vieques by the U.S. Navy as a target practice area has substantially destroyed its fishing industry and forced many of its inhabitants to go elsewhere in order to survive). In addition to United States crimes of genocide against the nation of Puerto Rico, Mr. Mansol's testimony will explain the continual resistance of the Puerto Rican people to colonialism, a struggle that is recognized as legitimate by the UN and other international bodies; and the current activities of the Puerto Rican Independence Movement.

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